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PATENT APPLICATION
Q-67999

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of

Pascal AGIN, et al.

Appln. No.: 10/036,356 Group Art Unit: 2681

Confirmation No.: 5474 Examiner: Gelin, J.

Filed: January 07, 2002

For: A METHOD FOR IMPROVING PERFORMANCES OF A MOBILE RADIOCOMMUNICATION SYSTEM USING A POWER CONTROL ALGORITHM

APPELLANT'S REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Reply Brief is filed in response to the Examiner's Answer mailed March 22, 2005.

1. Examiner Gelin states: "The Brief does not contain a statement identifying the related appeals and interferences..."(?). However, page 4 of Appellant's Brief states "NONE".

Therefore, the Examiner's presumption "that there are none" is correct.

2. The Examiner cites rule 37 C.F.R. § 1.192(c)(7) and criticizes Appellant's Brief because it "does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof". However, the cited Rule has been replaced (on August 12, 2004) with the new Rule 37 C.F.R. § 41.37(c)(vii) which does not require such a "statement", but only that

> for each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone.

The correctness of the rejection of independent parent claim 17 and its dependent claims 18-21, 23-27, 29, 31, 32, 34, 37, 41 and 43-50 under 35 U.S.C. § 102(b) based on alleged anticipation by Tiedemann's disclosure is determined by a factual inquiry. That is, does Tiedemann disclose, either expressly or inherently, each limitation of each of these rejected claims, or in other words, is each of these rejected claims readable on Tiedemann's disclosure? Appellant has already explained why the independent claim 17 is **not anticipated** by (i.e., is not readable on) Tiedemann's disclosure, and it follows by definition that, if independent parent claim 17 is not readable on Tiedemann, then its rejected dependent claims are **further unreadable** on Tiedemann. This explanation/argument is already stated in Appellant's Brief at page 15 as follows:

> In summary, then, since Tiedemann does not disclose, either expressly or inherently, each limitation of claims 17-21, 23-27, 29, 31, 32, 34, 37, 41 and 43-50, or in other words, since none of these claims is readable on Tiedemann's disclosure (as explained in detail above), Appellant respectfully submits that Tiedemann is **incapable** of "anticipating" any of these claims, whereby Appellant respectfully requests the Board to **reverse** the final rejection of 35 U.S.C. § 102(b).

3. On page 3 of the Answer, the Examiner makes the following statement:

> In order for one of ordinary skill in the art to capture the essence of the invention as broadly and **vaguely** claimed, a great deal of explanation should be provided to the **ordinary skilled artisan**, as the appellant has attempted to do in the present appeal brief, **for it is clear that the claims are not self sufficient**. (Emphasis added)

The relevance of this statement is not understood by Appellant, as it appears to contain non-statutory language which is unrelated to the final statutory rejections under 35 U.S.C. § 102(b) and 103(a). Appellant treats this statement as gratuitous. In this regard, it is noted that no claims are rejected under 35 U.S.C. § 112, second paragraph. However, Appellant points out that the rejected independent claim 17 (and, thus, all of the rejected claims) is limited to "using a closed-loop power control algorithm", thereby further emphasizing that the "invention" of claim 17 (and its rejected dependent claims) is **not anticipated** or rendered obvious by Tiedemann's disclosure or rendered obvious over Tiedemann in view of Faber .

Thus, Appellant's traverses (and bases for reversal) of the two final statutory rejections remain as presented in Appellant's Brief at pages 10-15 thereof.

(The application on appeal is a continuation of Application No. 09/348,005, now Patent No. 6,337,973 issued January 8, 2002.)

Respectfully submitted,

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